



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 11-11467
)
Applicant for Security Clearance)

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

05/07/2013

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate security concerns arising under Guideline F, Financial Considerations. Clearance is denied.

Statement of the Case

On December 12, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On January 17, 2013, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

On February 5, 2013, Department Counsel compiled the Government's File of Relevant Material (FORM) that contained documents identified as Items 1 through 9.

On February 5, 2013, the Defense Office of Hearings and Appeals (DOHA) forwarded to Applicant a copy of the FORM with instructions to submit any additional information and objections within 30 days of its receipt. Applicant received the FORM on February 13, 2013, and did not submit any objections or additional matters within the allotted time period. The case was assigned to me on March 30, 2013. Items 1 through 9 are entered into the record.

Findings of Fact

Applicant is a 46-year-old process engineer who works for a defense contractor. He has been working for his current employer since May 1998. He graduated from high school in 1984. He is married and has two children, ages 20 and 26. He appears to have held a security clearance since about 2000 without incident.¹

The SOR alleged that Applicant had 17 delinquent debts totaling \$18,636. In his Answer to the SOR, Applicant admitted each allegation with comments. His admissions are incorporated as findings of fact.²

In October 2000, a Special Agent of the Defense Investigative Service interviewed Applicant about his past-due debts during a security clearance background investigation. During that interview, Applicant revealed that he and his wife had 22 debts totaling \$7,823 that were in a debt consolidation program. The debt consolidation program was started just before that interview, and he was making \$40 payments per month under that program. Three of the debts in that program dated back to 1992; while the others were from 1993 to 2000. He attributed those financial problems to insufficient hourly wages and medical expenses arising from the birth and health care of his child. He also indicated that he had a couple of other debts that were not part of the debt consolidation program. At that time, he stated that he intended to satisfy all of his financial obligations. The debts addressed during that interview are not alleged in the SOR.³

In his Answer to the SOR, Applicant indicated that the alleged medical bills were due to an electrical shock that he suffered in 2010, and to his wife being diagnosed with thyroid cancer in 2012. During an interview with an Office of Personnel Management (OPM) investigator on July 6, 2011, he indicated that he received a severe electrical shock while replacing a deep well pump at his sister-in-law's residence. He was hospitalized for an unspecified period of time for that shock and he noted that he was

¹ Item 4.

² Items 1 and 3.

³ Item 6.

still suffering short-term memory loss due to that incident. He thought that his health insurance would cover the majority of the \$13,000 of medical bills arising from the electrical shock incident. He noted that about \$3,000 was then still owed to the hospital. He also indicated that he was negotiating with his sister-in-law's homeowner's insurance company to obtain compensation for the remaining debt arising from that incident. He provided no specifics of his wife's illness or how it may have affected their financial situation.⁴

SOR ¶ 1.a. This paragraph alleged that a mortgage company filed a judgment against Applicant in the amount of \$13,063 in 2010. An online court record confirmed that the mortgage company obtained this judgment and revealed that the amount alleged in the SOR consisted of \$9,487.64 for the judgment, \$2,114.83 in interest, \$38 in court costs, and \$1,423.14 in attorney fees. A lien was recorded for this judgment on May 26, 2011. A law firm is the collection agent for the judgment. In his Answer to the SOR, Applicant provided a letter from that law firm indicating that he submitted a \$300 payment to the law firm in January 2013 and that the balance of this debt had been reduced to \$5,364.⁵

SOR ¶¶ 1.b through 1.i and 1.k through 1.m. These 11 debts total \$2,318. The dates of last activity on these debts range from July 2007 to February 2012. In his response to interrogatories in October 2012, Applicant stated that he was in the process of making payments or payment arrangements for many of these debts. In his Answer to the SOR, he indicated that he would pay these debts once the debt in SOR ¶ 1.a was resolved. No proof of payments or payment arrangements was provided for these debts. These debts remain unresolved.⁶

SOR ¶¶ 1.j, 1.n, 1.o, and 1.q. These four debts total \$2,281. In his Answer to the SOR, Applicant indicated that he either paid these debts or thought that he paid them. He provided no documentation to prove he paid any of them. Insufficient proof has been presented to show these debts are resolved.⁷

SOR 1.p. This is a credit card debt that was placed for collection in the amount of \$974. In his Answer to the SOR, Applicant stated that this debt was part of the debt in SOR ¶ 1.a. He referenced the letter from the law firm collecting the debt in SOR ¶ 1.a as support for his claim that the two debts were combined. However, nothing in the law

⁴ Item 6.

⁵ Items 1, 5, 6, 7, 8, and 9. Some confusion exists in the record about the nature of this judgment because two credit reports indicated that it was for a medical debt. After reviewing the online court record, the credit reports, and the law firm's letter, it is apparent that the credit reports incorrectly listed this judgment as a medical debt. This debt was for a line of credit that Applicant had with the mortgage company.

⁶ Items 1, 3, 5, 7, and 8.

⁷ Items 1, 3, 5, 7 and 8.

firm's letter supports that claim. Of note, the two debts are from different creditors. Insufficient proof has been presented to show this debt is resolved.⁸

Applicant provided no proof that he has received financial counseling. In October 2012, he submitted a personal financial statement that reflected his net monthly income was \$4,398, that his monthly expenses were \$2,300, and that his monthly debt payments were \$600, which left him a net monthly remainder of \$1,498. His annual salary is \$82,820.⁹

Policies

The President of the United States has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AGs. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the

⁸ Items 1, 3, and 5.

⁹ Items 1-9.

strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18 as follows:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated numerous delinquent debts that he was unable or unwilling to pay over an extended period. The evidence is sufficient to raise the above disqualifying conditions.

Five financial considerations mitigating conditions under AG ¶¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's financial problems are ongoing, long-standing, and cast doubt on his current reliability, trustworthiness, and good judgment. Based on the evidence presented, I cannot find that his financial problems are unlikely to recur in the further. AG ¶ 20(a) does not apply.

In 2010, Applicant received a severe electrical shock that required hospitalization. In 2012, his wife was diagnosed with thyroid cancer. Eleven of the SOR allegations were medical debts. His and his wife's medical illnesses were conditions beyond their control that apparently contributed to the alleged financial problems. Some of those debts, however, became delinquent before those illnesses. He has been making monthly payments of \$300 on the largest debt (SOR ¶ 1.a) and has shown that debt is being resolved. It is troubling, however, that his net monthly remainder was about \$1,489, but he has not paid any of the smaller debts, i.e., those less than \$500. From the evidence provided, I cannot find that he acted responsibly under the circumstances. He provided no proof that he received financial counseling. He has not presented a convincing plan for resolving most of the alleged debts. Applicant has not

established that he is fiscally responsible or will act in that manner in the future. AG ¶¶ 20(b), 20(c), and 20(d) partially apply.

Applicant claimed that the debt in alleged in SOR ¶1.p was a part of the one in SOR ¶1.a. However, he provided no documentation to substantiate that claim. AG ¶ 20(e) does not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress;
- and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has served in his current job for 15 years. He has held a security clearance in the past without any security violations. Nevertheless, he has a history of financial problems. In 2000, he entered into a debt consolidation program that included debts dating back to 1992. Some of his current debts in the SOR date back to 2007. He has not presented sufficient evidence to show that he will resolve his current debts and remain fiscally responsible in the future. Despite the presence of some mitigation, his financial problems remain a security concern.

Overall, the record evidence leaves me with questions and doubts about Applicant's suitability for a security clearance. Therefore, I conclude Applicant has not mitigated the security concerns arising under Guideline F.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.q:	Against Applicant

Decision

In light of all the circumstances presented by the record, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

James F. Duffy
Administrative Judge